

March 4, 2019

Mr. Devin Leary
Human & Rohde, Inc.
512 Virginia Avenue
Towson, MD 21286

Re: Susel Property – 8410 Park Heights Avenue
Forest Conservation Variance
Tracking #02-19-2928

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on February 12, 2019. If granted, the variance would allow removal of three (3) specimen trees in order to develop a three-lot minor subdivision. The property currently consists of two parcels and contains one single-family dwelling, garages, a pool, pool house, and extensive landscaping. The specimen trees to be removed include a 44-inch diameter-at-breast-height (DBH) white oak, a 42.5-inch DBH chestnut oak, and a 39.5-inch DBH white oak, all in good condition. None of the specimen trees are within forest. There are 26 other specimen trees on the property outside the Forest Buffer and Forest Conservation Easements that will not be impacted by construction.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to construct an additional single-family home on the property as well as convert an existing garage into a third single-family home. Given that the property already contains one single-family dwelling along with several outbuildings, full application of the law would not deprive the applicant of

all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due the number and distribution of specimen trees across the site rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood predominantly consists of low to medium density residential lots on large forested lots as well as some agricultural areas. Given that the proposed development will result in the addition of two more single-family dwellings on large forested lots, we find that the proposed development will not alter the essential character of this neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees to be removed are in upland areas and not within the proposed Forest Buffer and Forest Conservation Easement. Moreover, forest contiguous with the Forest Buffer Easement and encompassing steep slopes will be retained in excess of the break-even point. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although three specimen trees are to be removed, 26 other specimen trees will be retained. Furthermore, the applicant proposes to retain 6.4 acres of forest within a Forest Conservation Easement, which exceeds the 3.7-acre breakeven point by 2.7 acres. The applicant also proposes to mitigate the removal of the specimen trees through payment of a fee-in-lieu. Finally, the specimen trees to remain that are within the project's limit of disturbance will be protected during construction in accordance with an EPS-approved Forest Conservation Plan. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. A \$5,151 fee-in-lieu mitigation for the removal of the 44-inch DBH white oak, the 42.5-inch DBH chestnut oak, and the 39.5-inch DBH white oak shall be paid prior to EPS approval of any grading or building permit. The check must be made payable to Baltimore County.
2. A final Forest Conservation Plan detailing the protection of the remaining specimen trees shall be approved by EPS prior to grading plan or permit approval.
3. The following note must be on all subsequent plans for this development project:

“A variance was granted on March 4, 2019 by Baltimore County Dept. of Environmental Protection and Sustainability to remove three specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met, including payment of a fee-in-lieu of mitigation.”

This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

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DVL/lbe

- c. Mr. Richard Susel and Ms. Carolyn Susel
Mr. Dick Matz, Colbert Matz Rosenfelt
Ms. Marian Honeczy, Maryland Department of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name